IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No.139 of 1994

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME-TAX - Applicant(s)
Versus
MADHUSUDAN VEGETABLE PRODUCTS CO. LTD - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
NOTICE SERVED for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI
Date : 04/10/2005
ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1. The following question has been referred by the Income-tax Appellate Tribunal, Ahmedabad Bench

'C' under Section 256(2) of the Income-tax Act, 1961 (the Act) at the instance of the Commissioner of Income-tax:

> *"Whether, the Appellate Tribunal is right in law and on facts in setting aside the order of the I.A.C. (Asstt.) deducting the difference between the depreciation allowed under the Income-tax Act and depreciation as provided in the books of accounts from the reserves in the computation of capital ?"*

2. While computing the chargeable profits under The Companies (Profits) Surtax Act, 1964 (the 1964 Act) the Assessing Officer reduced the general reserves by a sum of Rs.19,28,053/-. According to the Assessing Officer, in the Profit and Loss A/c. based on the books of account the assessee-company had debited an amount of Rs.23,78,708/- towards depreciation of assets used for business. Such depreciation was calculated on the basis of "straightline method". As against that, under the Act, the assessee was granted deduction of depreciation of Rs.42,56,761/-. Therefore, according to the Assessing Officer, the difference between the said two figures was

required to be reduced from the general reserves.

3. The asseessee failed in its appeal before the CIT (Appeals) and carried the matter in Second Appeal before the Tribunal. Vide order dated 24th January, 1991 the Tribunal granted the relief and held that in absence of any provision in the Second Schedule for deducting the difference between the depreciation allowed under the Act and depreciation as provided in the books of accounts, no such deduction could be made while computing capital for determining liability to Surtax.

4. Mr.M.R.Bhatt, learned Senior Standing Counsel appearing on behalf of the applicant-Revenue has been heard. He has invited attention to the definition of “chargeable profits” under Section 2(5), “statutory deduction” under Section 2(8), Section 4 dealing with “Charge of tax”, First Schedule and the Second Schedule of the 1964

Act. According to him, on a conjoint reading of the aforesaid provisions, the Tribunal could not have permitted the assessee any relief and the capital computed by the Assessing Officer was required to be upheld. Though served, there is no appearance on behalf of the respondent-assessee.

5. The Scheme of the 1964 Act requires in the first instance to compute chargeable profits as per Rules provided in the First Schedule. Thereafter, the capital is required to be computed under the Second Schedule. At the third stage the chargeable profits computed under the First Schedule are required to be reduced by the statutory deduction which is an amount equal to 15% of the capital computed in accordance with the Rules of computation under the Second Schedule. Thereafter, the chargeable profits are liable to Surtax at the rate or rates specified in the Third Schedule.

6. In the present case, there is no dispute as to computation of the chargeable profits. The only dispute is while computing the capital under the Second Schedule of the 1964 Act. Under Rule 1(iii) of the Second Schedule while computing the capital the figure of other reserves before being included for the purpose of aggregation is required to be reduced by the amounts credited to such reserves as have been allowed as a deduction in computing the income of the assessee for the purpose of the Act. Therefore, the figure of general reserves as reflected in the accounts of the assessee is required to be reduced by the amount which is in the first instance allowed as a deduction while computing the income under the Act and which sum, in the second instance, is credited to such reserves viz. general reserves.

7. In the instant case, the Tribunal has recorded the following finding of fact:

> "In the present case, no such amounts have been credited to the reserves and as such the reserves are not liable to be reduced by any amount"

8. In these circumstances, it is apparent that the requirement envisaged by Rule 1(iii) of the 1964 Act is not satisfied. Once this is the position, it is not possible to state that the Tribunal has committed any error in law.

9. Reliance on behalf of the Revenue on decision of this Court in the case of *Anup Engineering Ltd. Vs. Commissioner of Surtax/Income-tax*, [1995] 211 ITR 196 (Guj.) cannot assist the revenue in light of the fact that the categorical finding recorded by the Tribunal in the instant case does not appear in the reported decision and hence, the said decision would stand on its own facts.

10. In the result, the question is answered in the affirmative i.e. in favour of the assessee and against the Revenue.

11. The reference stands disposed of accordingly. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

Sd/-
[H.N. DEVANI, J]

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*Bhavesh**